

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

	)	
	)	
	)	Civ. No.
	)	
JI SU CHOI and	)	
CHO KYUNG KIM	)	COMPLAINT TO COMPEL
	)	AGENCY ACTION UNDER
Plaintiffs	)	28 U.S.C § 1361 AND 5 U.S.C.
	)	§§ 555(b), 701(1), AND FOR
v.	)	A WRIT OF MANDAMUS TO
	)	COMPEL DEFENDANTS'
UR M. JADDOU, Director of U.S.	)	ADJUDICATION OF FORMS I-485
Citizenship and Immigration Services	)	ADJUSTMENT OF STATUS
	)	APPLICATION
	)	
	)	Agency No. A216-366-182
	)	Agency No. A214-609-807
Defendant.	)	
	)	
	)	

**COMPLAINT FOR WRIT OF MANDAMUS**

**To the Honorable Judges of Said Court:**

Plaintiffs, Mr. Ji Su Choi and Ms. Cho Kyung Kim, through undersigned counsel, allege as follows:

**I. INTRODUCTION**

1. This is a civil action brought pursuant to 28 U.S.C. § 1361, 8 U.S.C. § 1329, and 28 U.S.C. § 1331, to redress the deprivation of rights, privileges and immunities secured to Plaintiffs to compel Defendant to perform a duty Defendant owed to Plaintiffs.
2. This action is brought to compel Defendant and those acting under them to take action on

Applications to Adjust Status to Permanent Resident, Forms I-485 (“Application”) for Plaintiffs to become a Lawful Permanent Resident of the United States.

3. Plaintiffs request that this Court issue injunctive relief and a writ in the nature of mandamus compelling the Defendant to make a determination to grant or deny adjustment of status under 8 U.S.C §1255.

## **II. JURISDICTION**

4. This Court has general federal question jurisdiction over this action under 5 U.S.C. §§ 555(b) and 706(a), 28 U.S.C. § 1361, and 28 U.S.C. § 1331(a). Jurisdiction is also conferred by 5 U.S.C. § 704.
5. This Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and F.R.C.P. 57 and 65.

## **III. VENUE**

6. Venue in the Middle District of Georgia is proper pursuant to 28 U.S.C. §1391(e). Defendant is Officer of the United States acting in her official capacity, and the U.S. Attorney General’s Office, the Department of Homeland Security (“DHS”), and the United States Citizenship and Immigration Services (“USCIS”) are agencies of the United States. Further, Plaintiffs are residents of Fulton County. Therefore, the Plaintiffs reside in this judicial district.

## **IV. EXHAUSTION**

7. There are no administrative remedies available for Plaintiffs to exhaust.

## **V. PARTIES**

### **Plaintiffs**

8. Principal Plaintiff, Ji Su Choi (Alien Registration Number: A216-366-182), and his wife, Plaintiff, Cho Kyung Kim (Alien Registration Number: A214-609-807), are residents of Fulton County, Georgia and are applicants for adjustment of status.

### **Defendant**

9. Defendant UR M. JADDOU, is the Director of USCIS, a fee-for-service agency which she is responsible for the administration and enforcement of the immigration laws of the United States. This action is brought against her in her official capacity.

## **VI. FACTUAL ALLEGATIONS**

10. Principal Plaintiff, a 57-year-old male who is a native and citizen of South Korea, has resided continuously in the United States since October 2004. *See* Exhibit A.
11. Principal Plaintiff is a resident of Fulton County. Plaintiff came to the United States as an F-1, an international student, and later filed an application for adjustment of status on July 19, 2019 with his spouse, additional Plaintiff Cho Kyung Kim. *See* Exhibit B.
12. Principal Plaintiff is a beneficiary of approved I-140 visa petition which was filed by JCG Foods of Georgia, LLC on July 19, 2019 with USCIS and approved on December 2, 2020. The visa petition carries a priority date of December 20, 2018. *See* Exhibit C.
13. The USCIS accepted applicants' adjustment applications along with an application for employment authorization. Labor, USCIS approved Principal plaintiff's application for employment authorization which allowed the Principal Plaintiff to engage in lawful employment at JCG Foods of Georgia, LLC. Upon obtaining an employment

authorization from USCIS, the Plaintiff has been working for the petitioner, JCG Foods of Georgia, LLC. *See* Exhibit D.

14. Principal Plaintiff is eligible to have his Application adjudicated because it is based on the approval of I-140 Petition, which USCIS already approved. *See* Exhibit C.

15. The Plaintiffs have at all times met and continue to meet the requirements necessary to adjust status in the United States.

16. According to USCIS, the processing time for the Texas Service Center for eighty percent of employment-based adjustment applications is 31.5 months, and applications taking longer than that are outside of processing time. *See* Exhibit E.

17. The national median processing time for Form I-485 for employment-based adjustment applications has never been more than 11 months for Fiscal Year 2018 to 2023 (up to January 31, 2023). *See* Exhibit F.

18. Principal Plaintiff fits into preference category EB3 from South Korea and his priority date is December 20, 2018. *See* Exhibit B. The February 2023 Visa Bulletin shows the EB3 from South Korea for other workers January 1, 2020. Therefore, visa numbers are immediately available for Plaintiffs. *See* Exhibit G.

19. Despite Plaintiffs' diligent effort and follow-up, it does not seem as though Defendant is moving forward on adjudicating Plaintiff's Application.

### **COUNT 1**

20. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 19 above.

21. Plaintiff is eligible for immediate adjudication of his application.

22. Plaintiff is admissible to the United States as a lawful permanent resident.

23. Plaintiff has suffered and will continue to suffer significant and irreparable harm because

of the Defendant's policies, procedures, acts and failures to act as described herein.

24. Defendant has violated Plaintiffs' statutory right to apply for benefits which Congress has

25. provided under the INA, depriving Plaintiff of the opportunity to pursue adjustment of status to lawful permanent residence and live lawfully in the United States under 8 USC § 1255.

### **Count 2**

26. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 25 above.

27. Plaintiffs have suffered a legal wrong or have been "adversely affected or aggrieved" by agency action. 5 U.S.C. § 702. Plaintiffs are persons aggrieved by agency action, for which there is no other adequate remedy in a court. 5 U.S.C. § 704.

### **Count 3**

28. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 27 above.

29. Defendant owes Plaintiffs a clear and certain duty to adjudicate Plaintiffs' Applications.

30. Plaintiffs have no other adequate remedy.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the Court:

1. Assume Jurisdiction over this action;
2. Issue a writ of mandamus compelling Defendant to immediately adjudicate the pending Application;
3. Award Plaintiffs reasonable costs and attorney's fees under the Equal Access to Justice

Act; and

4. Award such further relief as the Court deems just or appropriate.

Respectfully submitted on this 13th day of February, 2023,

/s/

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*Counsel for Plaintiff*

**VERIFICATION**

I, Myung-Sun Caitlyn Goldstein, hereby verify that, to the best of my knowledge and belief, the matters stated in the Complaint to Compel Agency Action and for a Writ of Mandamus to Compel Defendant's Adjudication of Forms I-485 Application to Adjust Status are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Suwanee, Georgia on this 13th day of February, 2023,

\_\_\_\_\_/s/\_\_\_\_\_

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*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

This is to certify that I electronically filed the foregoing **COMPLAINT FOR MANDAMUS RELIEF** and its accompanying Exhibits with the Clerk of Court using the CM/ECF system. This system will automatically send email notification of such filing to all below Defendant who are registered with this system. In addition, in compliance with local rules, this initial Complaint and the accompanying Exhibits and summons will also be served by First Class Certified Mail, postage pre-paid, on:

Ur M. Jaddou, Director  
c/o  
Office of the Chief Counsel  
20 Massachusetts Avenue, NW  
Room 4210  
Washington, D.C. 20529

Kurt R. Erskine, Acting USA  
Northern District of Georgia  
75 Ted Turner Drive SW  
Suite 600  
Atlanta, Georgia 30303

Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Certified this 13th day of February, 2023,

\_\_\_\_\_  
/s/

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